

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division**

CYNTHIA P. KEYS,

Plaintiff,

v.

Civil Action No.: 4:03cv170

**COMMISSIONER
OF SOCIAL SECURITY,**

Defendant.

OPINION AND ORDER

Plaintiff brought this action under 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3) seeking judicial review of the final decision of the Commissioner of Social Security (“Commissioner”) denying her claim for disability insurance benefits and supplemental security income under the Social Security Act (“SSA”). By order of reference dated April 12, 2004, this matter was referred to United States Magistrate Judge Stillman for a Report and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and the Rules of the United States District Court for the Eastern District of Virginia.

Magistrate Judge Stillman filed his Report and Recommendation (“R&R”) on August 22, 2005. In pertinent part it finds that: the Administrative Law Judge (“ALJ”)’s determination that the Plaintiff is not disabled is not based on substantial evidence and the ALJ’s determination of the Plaintiff’s residual functional capacity is not supported by substantial evidence because it was not reached through a correct application of the relevant law. The R&R also finds that new evidence presented to the Social Security Appeals Council conflicts with any decision made based upon a record that did not include that evidence. Accordingly, the Magistrate Judge

recommends that the final decision of the Commissioner be vacated and the matter remanded.

By copy of the R&R, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge within ten (10) days from the date the R&R was mailed, pursuant to Rule 6(a) of the Federal Rules of Civil Procedure. The time for filing written objections has now passed, and neither party has filed objections. As indicated in the R&R, “failure to file timely objections to the findings and recommendations set forth [in the R&R] will result in a waiver of the right to appeal from a judgment of this Court based on such findings and recommendations.” See R&R, pp. 33-34.

This Court has reviewed the R&R of the Magistrate Judge and hereby adopts and approves in full the findings and recommendations set forth therein. It is hereby **ORDERED** that Defendant’s Motion for Summary Judgment (Doc. 12) be **DENIED** and Plaintiff’s Motion for Summary Judgment (Doc. 8) be **DENIED** to the extent it sought reversal of the Commissioner’s decision but **GRANTED** to the extent it sought vacation and remand of the Commissioner’s decision. The Commissioner’s decision is **VACATED** and the matter is **REMANDED** for further proceedings consistent with this Report and Recommendation.

The Clerk is **REQUESTED** to send a copy of this Opinion and Order to all counsel of record.

It is so **ORDERED**.

/s/
HENRY COKE MORGAN, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
October 11, 2005